IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1995/07

Kailash Chand Agarwal

Versus

State & Anr.

DATE OF ORDER :: 15/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Pankaj Gupta,for petitioner
Mr. Arun Sharma, Public Prosecutor

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Instant petition has been filed assailing order dated 15th June, 2007 whereby complaint of petitioner filed with regard to offence u/s.138 of Negotiable Instruments Act before taking cognizance was dismissed in default and the application for restoration which was filed within 13 days of its dismissal was also rejected vide order dated 6th September, 2007.

Petitioner-complainant filed a complaint u/s.138 of Negotiable Instruments Act against accused-non-petitioner with regard to default in payment by dishonouring of cheque on 19th June, 2006. Thereafter, the matter was fixed on 27th August, 2006 and arguments were made for taking cognizance on 28th October, 2006. It appears that case was adjourned on 2nd January, 2007 and thereafter, on 30th March, 2007 and further posted on 15th June, 2007 for passing order by learned

Magistrate for taking cognizance on the said complaint. Since arguments were already made on his behalf and no one could appear on solitary date i.e. 15th June, 2007 complaint itself was dismissed by learned Magistrate in non-prosecution. Within 13 days of its passing said order, application for restoration was filed that too was dismissed vide order impugned dated 6th September, 2007.

Normally the notices are required to be issued in the matter and respondents are required to be heard, but in the facts of instant case, since before taking cognizance, complaint itself was dismissed in default, no notices were issued to the respondent by learned trial Judge. This court does not consider appropriate to issue notice to the respondent in the facts of instant case.

The facts giving rise to present situation are that when arguments were already made on behalf complainant with regard to taking cognizance of offence u/s.138 of the Act and if for some good reason, the Presiding Officer could fail to pass order that could not be considered to be a ground for rejection of his complaint in default on solitary date on which he could not put appearance. Such action, in opinion of this court, cannot be said to be justified and the restoration application which was filed within

span of 13 days has also not been properly considered and contents thereof have not been appreciated in true perspective.

Accordingly, the misc. petition stands allowed. The orders dated 15th June, 2007 and dated 6th September, 2007 stand set aside. Complaint be restored at its original number and learned trial Judge is directed to proceed further with the matter in accordance with law.

[AJAY RASTOGI],J.

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